IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

THOMAS J. HALL,	)	
	)	
Plaintiff,	)	Civil Action No. 7:04CV00285
	)	
v.	)	**MEMORANDUM OPINION**
	)	
STANDARD INSURANCE CO.,	)	By: Hon. Glen E. Conrad
	)	United States District Judge
Defendant.	)	

This case is before the court on defendant's motion to dismiss and motion for protective order. For the reasons stated below, the court will grant defendant's motion for protective order in part and deny the motion in part. The court will take defendant's motion to dismiss under advisement at this time.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Thomas J. Hall ("Hall") was an income partner with Woods, Rogers & Hazlegrove, PLC ("Woods Rogers") and a participant in the long term disability policy offered by Woods Rogers to all equity and income partners as well as employees of the firm. All income and equity partners, including Hall, paid for the insurance personally. During a vacation in December 2000, Hall became ill. He was hospitalized in January 2001 and treated for whooping cough and pneumonia. Hall then became unable to work because he could not speak without coughing.

Hall filed a disability claim with Standard Insurance Company ("Standard"), the company which sold the long term disability policy. Standard awarded Hall disability benefits after determining that Hall became disabled in December 2000. Standard cut off Hall's benefits after a two year period,

however, alleging that his continued cough was psychogenic in nature. Hall contested the onset date determined by Standard as well as the monthly benefit amount. Hall also claimed that his chronic cough was caused by physical, rather than mental, factors and that Standard inappropriately terminated his disability benefits.

On June 4, 2004, Hall filed a complaint against Standard alleging a state breach of contract claim as well as a state claim for attorney's fees. In the alternative, Hall also made a claim for benefits under the plan and for attorney's fees under the Employee Retirement Income Security Act of 1974 ("ERISA"). On October 5, 2005, Standard filed its motion to dismiss claiming that all of Hall's claims based upon state law are preempted by ERISA. On November 17, 2004, Standard filed a motion for protective order requesting the court to limit discovery to the administrative record it would produce in the litigation.

DISCUSSION

I. Standard of Review

When deciding a motion to dismiss under Rule 12(b)(6), the court must determine "whether the complaint, under the facts alleged and under any facts that could be proved in support of the complaint, is legally sufficient." Eastern Shore Market, Inc. v. J.D. Assocs. Ltd. Partnership, 213 F.3d 175, 180 (4th Cir. 2000). The court must accept the allegations in the complaint as true, and draw all reasonable factual inferences in favor of the plaintiff. The court should not dismiss a complaint for failure to state a claim, unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

II. Motion to Dismiss

Standard bases its motion to dismiss upon the following grounds: (1) that the state law claim for breach of contract stated in Count One of Hall's complaint is preempted by ERISA; (2) that the state law claim for attorney's fees under Virginia Code § 38.2-209 is preempted by ERISA; and (3) that the state law claim that the group long term disability insurance policy is a contract of adhesion, is ambiguous, and/or should be construed against Standard, is preempted by ERISA. Standard bases its request for dismissal upon its contention that the long term disability plan is an employee welfare benefit plan that is governed by ERISA.

The following elements must be present for a plan to be considered an employee welfare benefit plan under ERISA: (1) a plan, fund or program (2) established or maintained (3) by an employer (4) for the purpose of providing medical, surgical, hospital care, sickness, or disability benefits (5) to participants or their beneficiaries. Madonia v. Blue Cross & Blue Shield of Virginia, 11 F.3d 444, 446 (4th Cir. 1993). The rights and remedies provided by ERISA supersede state laws that "relate to" any employee welfare benefit plan. 29 U.S.C. § 1144(a); Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 45 (1987). The state laws preempted by ERISA include common law causes of action such as breach of contract. See Makar v. Health Care Corp. of the Mid-Atlantic, 872 F.2d 80 (4th Cir. 1989).

Hall does not dispute the law as it relates to preemption of state law causes of action generally. Instead, Hall contends that the plan at issue here may fall under a safe harbor regulation which exempts from ERISA coverage programs offered by an insurer to employees in which (1) the employer makes no contributions; (2) participation in the program is voluntary; (3) the sole function of the employer is to permit the insurer to publicize the program to employees, collect premiums and remit premiums to the

insurer; and (4) the employer receives no consideration in the form of cash from the program. 29 C.F.R. § 2510.3-1(j). Hall contends that he may be able to obtain information through discovery that would support his argument that Woods Rogers was only minimally involved with the long term disability program and did not endorse the program.

In support of its contention that the long term disability plan is an employee welfare benefit plan covered by ERISA, Standard notes that the Summary Plan Description specifically referred to ERISA in laying out the participants' rights under the plan, that Woods Rogers was named in plan documents as the plan administrator, and that the policy gave Woods Rogers the ability to change premiums and terminate the plan. Standard also attached certain documents to its reply to Hall's memorandum in opposition to its motion to dismiss. Those documents purport to be copies of an application for long term disability insurance completed by a representative of Woods Rogers, requests for amendment of the language of the long term disability policy submitted by a representative of Woods Rogers, and tax documents indicating that Woods Rogers was the plan sponsor of a long term disability insurance plan covered by ERISA. Standard has argued that these documents support its claim that Woods Rogers compromised its neutrality and endorsed the long term disability plan through its active involvement with that plan, thus taking the plan out of the safe harbor provided by the regulation.

The court finds Standard's contention that the plan at issue here is an employee benefit plan covered by ERISA compelling, however Standard's motion to dismiss is premature at this time. Standard is correct that a defendant may attach to a motion to dismiss a pertinent document omitted by the plaintiff in his complaint without converting that motion to one for summary judgment, but such a document must be a public record or must be quoted, relied upon or incorporated by reference in the

plaintiff's complaint and must be of "unquestioned authenticity." Gasner v. County of Dinwiddie, 162 F.R.D. 280, 282 (E.D. Va. 1995), aff'd 103 F.3d 351 (4th Cir. 1996). The documents attached to Standard's reply go beyond that standard in that they are not public records and are not specifically relied upon in Hall's complaint, unlike a copy of the relevant long term disability policy, for example. Furthermore, Hall disputes whether the documents are authentic because he has been unable to conduct any discovery regarding the documents and their origins.

If the information contained in those documents is accurate, the documents may be dispositive of the issue of whether Woods Rogers took more than a passive role with regard to the long term disability program. Nevertheless, Hall is entitled to investigate the documents' nature and origin. Therefore, the court will take Standard's motion to dismiss under advisement and will permit Hall to conduct limited discovery with regard to the nature and origin of the documents attached by Standard to its reply to Hall's memorandum in opposition to Standard's motion to dismiss.

III. Motion for Protective Order

Hall has propounded interrogatories and requests for documents and admissions to Standard. Standard seeks an order prohibiting Hall from requesting any discovery outside of the 882 page administrative record it has produced, pursuant to the court's previous order, and quashing the current discovery requests.

Because the language of the long term disability policy permits Standard to exercise discretionary authority in its role as claims administrator, this court will review that exercise under an abuse of discretion standard. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 111 (1989); Booth v. Wal-Mart Stores, Inc., Assoc. Health and Welfare Plan, 201 F.3d 338, 341 (4th Cir. 2000).

When reviewing the reasonableness of the decision of a claims administrator under that standard, a district court considers only the facts known to the administrator at the time of its decision. See Booth, 201 F.3d at 339 n.1 (quoting Sheppard & Enoch Pratt Hosp., Inc. v. Travelers Ins. Co., 32 F.3d 120, 125 (4th Cir. 1994)). Therefore, except in unusual circumstances, discovery outside of the administrative record is not available. See Stanley v. Metropolitan Life Ins. Co., 312 F. Supp. 2d (E.D. Va. 2004). Instead, if the court determines that the administrative record was somehow incomplete, the remedy is not additional discovery but remand to the defendant for a new review and determination. See Elliott v. Sara Lee Corp., 190 F.3d 61, 608-609 (4th Cir. 1999) (holding that remand, rather than the submission of new evidence to the district court, is appropriate when the court believes the administrator lacked the information necessary to make a proper determination).

First, Hall requests the court to permit discovery into Standard's potential conflict of interest. Here, however, Standard has admitted that it is both the insurer and the administrator under the plan, and as a result, has a financial interest in its own benefit decision. In a situation where an administrator has a conflict of interest, the degree of deference "will be lessened to the degree necessary to neutralize any untoward influence resulting from the conflict." Doe v. Group Hospitalization & Med. Servs., 3 F.3d 80, 87 (4th Cir. 1993). Therefore, the court would use the modified abuse of discretion standard rather than permit Hall to engage in any additional discovery.

Hall has also alleged that the independent physician consultant engaged by Standard to review his claim may have had a conflict of interest. In such a case, however, "it is not the conflict of interest of a consultant employed by a fiduciary that the Fourth Circuit has held is relevant." Abromitis v. Continental Cas. Co./CNA Ins. Cos., 261 F. Supp. 2d 388, 390 (W.D.N.C. 2003). Instead, the

relevant conflict of interest is that of the fiduciary itself. Id. Therefore, Hall would not be entitled to discovery with regard to the independent physician consultant, regardless of the fact that the consultant may have had a conflict of interest because he was paid by Standard. Instead, the court could consider that fact, among others, when reviewing the administrative record under the heightened abuse of discretion standard.

Hall has also requested additional discovery regarding the completeness of the administrative record and Standard's interpretation of its own plan terms. With regard to the administrator's interpretation of plan terms, discovery into the administrator's thought processes is prohibited. Stanley v. Metropolitan Life Ins. Co., 312 F. Supp. 2d 786, 791 (E.D. Va. 2004). In any case, in the Fourth Circuit, absent extraordinary circumstances, courts consider only the facts known to the administrator at the time of its decision, that is the information contained in the administrative record. See Booth, supra, 201 F.3d at 339 n.1.

Hall has, however, raised two specific issues upon which discovery should be permitted. Hall alleges that the key document in an ERISA case is the plan document. Hall further contends that he has not been provided with a copy of the plan document associated with the long term disability policy involved in this case. Hall also alleges that he does not have a copy of the correct version of the Summary Plan Description in effect at the time he was a participant in the long term disability plan. Hall will be permitted to conduct discovery into these two limited issues: (1) whether there is a plan that is distinct from the policy attached by Standard to its pleadings and (2) what was the correct version of the Summary Plan Description disseminated at the time Hall became a participant in the long term disability plan.

CONCLUSION

Because Hall has not been permitted to investigate the nature and origins of certain documents submitted by Standard in support of its motion to dismiss, the court will take Standard's motion under advisement until Hall has had the opportunity to conduct limited discovery regarding those documents. Standard's motion for protective order will be granted except that Hall may conduct discovery regarding the plan documents and the Summary Plan Description in effect and disseminated at the time Hall became a participant in the long term disability plan.

The Clerk is directed to send certified copies of this Opinion and accompanying Order to all counsel of record.

ENTER: This 10th day of February, 2005.

/s/ Glen E. Conrad
United States District Judge

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v.	)	**ORDER**
	)	
STANDARD INSURANCE CO.,	)	By: Hon. Glen E. Conrad
	)	United States District Judge
Defendant.	)	

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED

that defendant's motion to dismiss is taken under advisement. Plaintiff has fifteen (15) days from the date of this order to propound discovery requests regarding the documents produced by defendant in support of its motion. After receipt of those discovery requests, defendant has thirty (30) days to respond. After receipt of defendant's response, plaintiff has fifteen (15) days to prepare and submit to the court any supplemental arguments in support of his opposition to defendant's motion to dismiss.

It is further

ORDERED

that defendant's motion for protective order is GRANTED in part and DENIED in part.

The Clerk is directed to send certified copies of this Order to all counsel of record.

ENTER: This 10th day of February, 2005.

/s/ Glen E. Conrad
United States District Judge